



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/599,977

02/21/2008

Anne Butterly

2730.009

7639

21176 7590 09/15/2011
SUMMA, ADDITON & ASHE, P.A.
11610 NORTH COMMUNITY HOUSE ROAD
SUITE 200
CHARLOTTE, NC 28277

EXAMINER

TOMPKINS, ALISSA JILL

ART UNIT

PAPER NUMBER

3765

MAIL DATE

DELIVERY MODE

09/15/2011

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/599,977	Applicant(s) BUTTERLY ET AL.	
	Examiner ALISSA TOMPKINS	Art Unit 3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 October 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on ____; the restriction requirement and election have been incorporated into this action.
- 4) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 5) ☒ Claim(s) 1-18 is/are pending in the application.
- 5a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 6) ☐ Claim(s) ____ is/are allowed.
- 7) ☒ Claim(s) 1-18 is/are rejected.
- 8) ☐ Claim(s) ____ is/are objected to.
- 9) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 10) ☐ The specification is objected to by the Examiner.
- 11) ☒ The drawing(s) filed on 16 October 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 12) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>10/16/2006</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Priority

Acknowledgment is made of applicant's claim for foreign priority based on an application filed in Ireland on 4/16/2004. It is noted, however, that applicant has not filed a certified copy of the 2004/0267 application as required by 35 U.S.C. 119(b).

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is unclear what invention the applicant is actually trying to claim. Is it a cap, cape, apron, glove, towel, or turban? The applicant needs to choose one invention to form the claims around.

As for claim 2, the applicant claims that the web is impregnated with a dye retainer. What is a dye retainer? The claim has been rejected as best understood by the examiner.

Art Unit: 3765

Claim 15 recites the limitation "the neck" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claims 16, 17, and 18 recites the limitation "the absorbent articles" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3-6, 9-11, and 13-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Saito (U.S. 2002/0095711).

As for claim 1, Saito discloses a disposable absorbent article (Figure 1) (Paragraph 31) comprising a spun lace nonwoven web 22 (Paragraph 39), wherein the absorbent article is substantially moisture free.

As for claim 3, wherein a liquid proof membrane layer is provided on one surface of the web (Paragraphs 56-58).

As for claim 4, wherein a liquid proof membrane layer is provided on one surface of the web, and the liquid proof membrane layer comprises a plastic film layer (Paragraph 58).

As for claim 5, wherein a liquid proof membrane layer is provided on one surface of the web, and the liquid membrane layer comprises a layer of polyethylene film (Paragraph 58).

As for claim 6, wherein the web comprises between 50 and 100 % rayon and up to 30% polyester. (Paragraph 39). Saito states that 30-90% of thermosetting resin fibers can be made of polyester, therefore 30% could be polyester, while 10-70% of absorbent fibers could be made from rayon, therefore 50-70% falls in the claimed range of 50-100% percent.

As for claim 9, wherein the web is formed of hydrophilic fibers (Paragraph 39).

As for claim 10, wherein the web is formed from a recyclable material (and Paragraphs 31 and 39).

As for claim 11, wherein the article is a towel. It is noted that the applicant has not structurally defined the claimed towel. The surgical gown of Saito is capable of wrapping around a body of a wearer similar to that of a towel.

As for claim 13, wherein the article is a mat. It is noted that the applicant has not structurally defined the claimed mat. The absorbent article of Saito is capable of being used as a mat.

As for claim 14, wherein the article is a cape or apron (Figure 1).

As for claim 15, wherein the article is a cape or an apron and the cape is adapted to fit around a neck of a user (Figure 1, see 12 and 13).

Art Unit: 3765

As for claim 16, Saito discloses a kit (Figure 1) comprising a pack having one or more absorbent articles (Figure 1) comprising a cape/apron (Figure 1) (Paragraph 38).

As for claim 17, Saito discloses a hair dye kit comprising a pack having one or more absorbent articles (Figure 1) comprising a cape/apron (Figure 1) (Paragraph 38).

As for claim 18, Saito discloses a head lice kit comprising a pack having one or more absorbent articles (Figure 1) comprising a cape/apron (Figure 1) (Paragraph 38).

Claims 1 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by McDevitt (U.S. 2002/0152538).

As for claim 1, McDevitt discloses a disposable absorbent article comprising a spun lace nonwoven web, wherein the absorbent article is substantially moisture free (Paragraph 0148). It is noted that any garment/article is capable of being disposable.

As for claim 12, wherein the article is a glove 10 or a mitt (Figure 1).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 3765

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2, 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Saito.

Saito discloses the invention substantially as applied in claim 1 above.

However, Saito is missing a dye retainer and density for the web.

As for claim 2, the applicant has not further defined the claimed dye retainer. The fabrics used to make the surgical gown of Saito are capable of being dyed various colors and are therefore considered dye retainers as best understood by the Examiner.

As for claim 7, Saito doesn't specifically state that the web is formed by hydro entanglement, but it is well known in the art that spun lace nonwovens are formed by hydro entanglement.

As for claim 8, Saito does not explicitly state what the density of the nonwoven web is, but Saito does contain that same percentage of materials as claimed and as stated in the applicant's specification (50-100% rayon and up to 30% polyester) and would therefore have a density of between 30 and 80 g/m squared (Paragraph 39). It is also noted that the applicant has not provided any criticality in the specification for the claimed density.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Fujikawa (U.S. 2002/0095709 shows a surgical garment containing spun lace nonwoven fabric. Otsubo (U.S. 6,666,851) shows a disposable garment containing spun lace nonwoven fabric. Hill (U.S. 2002/0104150), Yeater (U.S. 5,566,689), and Henegan (U.S. 5,365,613) show headwear.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ALISSA TOMPKINS whose telephone number is (571)272-3425. The examiner can normally be reached on M-F 830-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Welch can be reached on 571-272-4996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3765

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Alissa J. Tompkins/
Examiner, Art Unit 3765